

Section	Policy
30	35.10.60

Section Title: Finance, Assessments and Administration - *Assessments*
Subject: Coverage under a Work Experience Program
Effective Date: For accidents on or after January 1, 2023

A. POLICY PURPOSE

Individuals participating in work experience programs can be exposed to the hazards of an industry. However, these people often are not automatically considered workers under *The Workers Compensation Act* (the Act). To encourage employers to accept individuals in work experience programs, the Act provides that the WCB may, by order, declare any person or group of persons who participates in a work experience program and who is not otherwise considered a worker under the Act, to be a worker. These workers will be referred to as trainees throughout this policy.

The Act provides that the deemed employer of the work experience worker includes both the educational/training institution that places the worker and the work experience employer. However, claims costs for work experience programs are not included in the experience of the work experience employer(s). The cost of this program will be borne by all employers since a better trained workforce benefits all Manitobans.

Average earnings must be calculated in accordance with the Act (unless the WCB provides otherwise in an order) and are indexed annually. The policy ensures that trainees who are injured and qualify for compensation receive wage loss payments even if they are not earning income as may be the case in many work experience programs.

This policy does not apply to any person who is otherwise considered a worker under the Act. Therefore, the board must first establish that a person is not a declared worker under the Act before a person may be declared a worker under a work experience program. As well, this policy does not apply to apprentices or learners who are treated separately in the legislation.

B. POLICY

1. Issuing an Order to Declare Coverage for Trainees in a Work Experience Program

- There are numerous work experience programs in various industries throughout the province. However, for a person to be declared as a worker under a work experience program and be eligible under this policy, an order must be written by the WCB and at a minimum include the following information:
 - a. A description of the work experience program.
 - b. Details describing who is running the program
 - c. Details describing who is included in the program.
 - d. A description of the type of activity that the trainee undertakes while participating in a work experience program.
 - e. Details of payment information including any change in the calculation of average earnings if it is not in accordance with subsection 77(3) or (3.1) of *The Workers Compensation Act*.
- Orders will be developed and issued by the Director of Assessment Services or his or her designate.
- An order may be very broad and capture several programs or it may be program specific.

The order may be initiated by the WCB or an outside organization, employer, or trainee.

2. Criteria for Extending Coverage Under a Work Experience Program

- The WCB will evaluate all work experience programs against the following criteria to determine if they should be included in an order:
 - a. The program is recognized, funded, and/or delivered by any level of government.
 - b. The program is accredited.
 - c. The program enhances the skills of its trainees and increases the likelihood of them obtaining employment.
 - d. The work experience employer must have workers compensation coverage.
 - e. No other reason exists for the WCB to deem coverage as inappropriate.
- A program does not need to satisfy all of the criteria listed above to be approved. Each criterion is separate and unique and it is the consideration of the total program which helps.

3. Worker Qualifying Under a Work Experience Program

- If an injured worker is a trainee of a program that has been declared by order to be a qualified work experience program, then the following must be demonstrated before the trainee is declared a worker under a work experience program:
 - a. The worker is required to participate in job training as part of his/her program. The work experience may include paid and unpaid placements.
 - b. The worker must be able to provide proof either in the form of a contract or letter that he or she is enrolled in an education/training program that requires job training.
- Injuries while attending classes at the educational/training institution are not covered under this policy.

4. Accidents Outside the Province

When the trainee has qualified as a worker under the work experience program, and an injury occurs at a job site in another province, entitlement to compensation will be determined as per Section 5 of the Act.

5. Average Earnings

- a. A long-term loss of earning capacity means a loss of earning capacity that extends beyond 24 months. This time period includes any week in a month in which full or partial wage loss benefits have been paid to the worker.
- b. When a person is declared to be both a worker under the work experience program and a youthful worker or a working student under Policy 44.80.30.30, *Determining Average Earnings for Apprentices, Youthful Workers and Working Students*, the declared work experience program provisions will apply for the purposes of calculating loss of earning capacity.
- c. The average earnings will be calculated in accordance with Policy 44.80.10.10, *Average Earnings*.

6. Deemed Period of Employment

The period of employment will be deemed to begin when the trainee enters the approved work experience program that has been included in an order, and will end when the trainee is deemed medically fit to return to work by the WCB.

7. Claim Costs Allocation

Any claim costs incurred will be charged to a common cost pool.

C. REFERENCES

The Workers Compensation Act, sections 1(1), 2(e), 5, 7(2), 39.2(2)(d), 47(1) – 47(6), 49.3(3), 76.6, 77(1), 77(3), 77(3.1), 77.1(1) – 77.1(7), 81(1)(h)

Related WCB Policies:

WCB Policy 31.05.10, *Cost Relief/Cost Transfer - Class E*

WCB Policy 31.05.15, *Cost Transfer - Self Insured*

WCB Policy 44.80.10.10, *Average Earnings*

WCB Policy 44.80.30.30, *Determining Average Earnings for Apprentices, Youthful Workers and Working Students*

WCB Policy 44.80.30.35, *Determining Average Earnings for Declared Workers*

History:

1. Policy established by Board Order 36/05 on October 26, 2005, effective January 1, 2006. No prior policy.
2. Policy updated to reflect changes in department name – June 2008.
3. Minor formatting and wording changes were made to the policy, June 27, 2012.
4. Policy updated November 10, 2017 to reflect consequential amendments to Section 7 (Claim Costs Allocation) and the reference section arising out of transition to the new rate setting model.
5. In January 2021, the title of policy 44.80.30.35 was updated and minor formatting changes were made to the policy.
6. Policy amended by Board Order No. 15/22 on June 21, 2022, effective for accidents on or after January 1, 2023. Consequential changes made to the policy include clarifying the long-term loss of earning capacity threshold; referencing a new category of workers "working students", and the new title of the amended policy 44.80.30.30, *Prospective Earnings - Apprentices and Youthful Workers*, which is now the *Determining Average Earnings for Apprentices, Youthful Workers and Working Students Policy*. Current policy 35.10.60, *Coverage Under a Work Experience Program*, will be archived and applies to accidents from January 1, 2006 to December 31, 2022 and any reconsiderations and appeals on these claims.

D. ADMINISTRATIVE GUIDELINES**I. Employer of Record**

Although the legislation provides that the deemed employer is both the educational/training institution and the work experience employer, for administrative purposes the employer of record is the work experience employer.

II. Issuing Orders

The administration of the WCB is responsible for writing orders. The process is intended to be flexible and provide relative administrative ease. Once it has been decided to declare a work experience program as eligible under this policy, an order will be developed and issued by the Assessment Services Department.